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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

INSURANCE COMPANY OF THE WEST, a
California corporation,

Plaintiff,

v.

RENO QUALITY HOMES, INC., a Nevada
corporation, HIGH VALLEY
DEVELOPMENT, LLC, a Nevada limited
liability company, ROBERT N.
FITZGERALD, an individual, SHERYL A.
FITZGERALD, an individual, THE ROBERT
N. FITZGERALD IRREVOCABLE TRUST, a
Nevada Trust, THE SHERYL FITZGERALD
IRREVOCABLE TRUST, a Nevada Trust,
ROBERT N. FITZGERALD, as the Trustee for
The Robert N. Fitzgerald Irrevocable Trust and
as Trustee for The Sheryl Fitzgerald Irrevocable
Trust, DOES I through X, inclusive; ROE
CORPORATIONS I through X, inclusive,

Defendants.

CASE NO: 2:17-cv-01272 RFB-CWH

**ORDER ON INSURANCE COMPANY OF
THE WEST'S MOTION TO ENLARGE
TIME TO SERVE SUMMONS AND
COMPLAINT AND TO SERVE BY
PUBLICATION
(First Request)**

This matter is before the Court on Insurance Company of the West's Motion to Enlarge Time to Serve Summons and Complaint and to Serve by Publication (First Request) (#4), filed on July 26, 2017.

Insurance Company of the West ("ICW") moves to extend time to serve its Complaint on Defendants High Valley Development, LLC, Robert N. Fitzgerald, Sheryl A. Fitzgerald, The Robert

1 N. Fitzgerald Irrevocable Trust, Robert N. Fitzgerald as the Trustee for the Robert N. Fitzgerald
2 Irrevocable Trust and as Trustee for the Sheryl Fitzgerald Irrevocable Trust (“Defendants”). ICW
3 requests an extension of 90 days. Fed. R. Civ. P. 4(m) requires the summons and complaint to be
4 served on the defendant within 90 days of filing the complaint. Should the plaintiff fail to effectuate
5 service within the 90 day limit, the Court will extend the time for service if the plaintiff establishes
6 that good cause exists for the failure. The Court has broad discretion to extend time for service. *Efaw*
7 *v. Williams*, 473 F.3d 1038, 1041 (9th Cir. 2003). ICW’s complaint against Defendants was filed on
8 May 8, 2017. The 90 day deadline to serve is August 7, 2017. ICW requests an additional 90 days to
9 serve, and requests permission to serve by publication.
10

11 ICW represents that it has been diligently attempting to serve the Defendants, but has been
12 unsuccessful. ICW has attempted to serve Defendants Robert Fitzgerald, individually, The Robert N.
13 Fitzgerald Irrevocable Trust, Robert N. Fitzgerald as the Trustee for the Robert N. Fitzgerald
14 Irrevocable Trust and as Trustee for the Sheryl Fitzgerald Irrevocable Trust through two addresses, but
15 was unsuccessful. Service was attempted four times at the first address (650 Spice Islands Drive
16 Sparks, NV 89431) and once at the second address, which was a bad address (1850 Hwy 40 W, Verdi,
17 NV 89439). Service is also not complete on Sheryl Fitzgerald, individually, and The Sheryl Fitzgerald
18 Irrevocable Trust, as the same addresses ICW has on file for Sheryl Fitzgerald are those of Robert
19 Fitzgerald. Lastly, service has not been completed on High Valley Development, LLC. Service was
20 attempted at 1180 W. Peckham Lane, Reno, NV 89509, however that was a bad address as new
21 occupants are in the home. Two additional addresses have been located and are currently pending for
22 service (2400 Crestview Drive, Elko, NV 89801, and 207 Brookwood Drive, Elko, NV 89801).
23
24

25 In addition to multiple attempts at personal service ICW has: (1) telephoned Mr. Fitzgerald at
26 his last known number; (2) emailed Mr. Fitzgerald attaching the complaint and requesting acceptance
27 of service and received no response (Exhibit 5); (3) attempted personal service on both Robert
28

1 Fitzgerald and Sheryl Fitzgerald at all addresses that could be located which are 650 Spice Islands
2 Drive, Sparks, NV 89431, and 1850 Hwy 40 W, Verdi, NV 89439; (4) attempted personal service on
3 High Valley Development, LLC at 1180 W. Peckham Lane, Reno, NV 89509; (5) searched the
4 secretary of state's public records for the addresses of the Defendant High Valley Development, LLC
5 and the individual defendants; (6) searched the City of Reno business records and public records; (7)
6 searched the records of the Nevada State Contractor's Board; (8) searched social media such as
7 LinkedIn, Facebook, and Google; (9) searched Washoe County Assessor's and Real Property records;
8 and (10) employed electronic searches in Westlaw's "Clear program to conduct an independent
9 research and investigate Mr. and Mrs. Robert Fitzgerald's current location or leads in such data bases
10 as vehicle registration, business affiliations, work affiliations, real property ownership and deeds,
11 possible liens and judgments, and so forth.

12
13 ICW also moves for an order granting permission to serve the Defendants by publication.
14 Pursuant to Fed. R. Civ. P. 4(e), service of summons by publication is governed by the law of the state
15 in which the District Court is located. Nevada R. Civ. P. 4(e)(1)(i) provides that the Court may permit
16 service by publication if, after a demonstration of due diligence, the plaintiff is unable to find the
17 defendant within the state or the plaintiff shows that defendants are within the state but avoiding the
18 service of summons. The question of due diligence is within the Court's discretion, as there is no
19 objective, formulaic standard for determining what is, or is not, due diligence under Nevada law.
20 *Abreu v. Gilmer*, 985 P.2d 746, 749 (Nev. 1999). As discussed above, ICW has been sufficiently
21 diligent in attempting to locate Defendants. Accordingly,
22

23
24 **IT IS HEREBY ORDERED** that Insurance Company of the West's Motion to Enlarge Time
25 to Serve Summons and Complaint and to Serve by Publication (First Request) (#4), is **granted**.

26 ICW has an additional ninety days for service from the date the Court files and serves the
27 Order.
28

1 Defendants may be served by ICW through publication. ICW shall publish the summons and
2 complaint at least once a week for four (4) consecutive weeks in a newspaper of general circulation
3 published in Clark County, Nevada. Plaintiff must also mail by U.S. Post Office a copy of the
4 summons and complaint to the last known address for Defendants pursuant to NRCP 4(e)(1)(iii).

5 Dated September 8, 2017

6
7
8 
UNITED STATES MAGISTRATE JUDGE

9 Respectfully submitted by:

10 THE FAUX LAW GROUP

11 /s/ Kurt C. Faux

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